

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services)	WT Docket No. 04-140
)	
Amendment of the 47 CFR Part 97 Amateur Radio Service and/or)	
Amendment of the 47 CFR Part 95 Subpart B Family Radio Service to Permit Non-Amateur Non-United States Resident Foreign Nationals Access to the 446.0 - 446.1 MHz Band)	RM - 10521

COMMENTS

Submitted by:

**Dr. Michael C. Trahos, D.O., NCE, CET
4600 King Street, Suite 6K
Alexandria, Virginia 22302-1249**

June 15, 2004

I.

INTRODUCTION

1. Before the Federal Communications Commission (Commission) is a Notice of Proposed Rulemaking¹ (**NPRM**) proposing several amendments to the 47 CFR Part 97 Amateur Radio Service (ARS) rules. This **NPRM** was adopted in response to multiple Petitions for Rulemaking, including RM-10521² which requested amendment of the ARS and/or amendment of the 47 CFR Part 95 Subpart B Family Radio Service (FRS) rules to allow visiting/transient/tourist non-amateur non-United States (US) resident foreign nationals access to certain frequencies within the 446.0 - 446.1 MHz band for the use of license exempt International Telecommunications Union (ITU) Region 1 Conference of European Posts and Telecommunications Administrators' (CEPT) European Radiocommunications Committee (ERC) of Decisions adopted [ERC/DEC/(98) 25³, 26⁴ and 27⁵] and European Telecommunications Standards (ETS) Institute (ETSI) approved [technical standard ETS 300 296]⁶ 446 MHz Personal Mobile Radio (PMR 446) service two-way transceivers.

II.

COMMENTER QUALIFICATIONS

2. Commenter is an unlimited licensed, board certified and actively practicing Adult Medicine/Geriatric Medicine/Family Practice Physician and Surgeon. Commenter holds the academic faculty appointment of Assistant Clinical Professor, Department of Family Medicine, Georgetown University School of Medicine. Commenter holds the current positions of Virginia [State] Osteopathic Medical Association (VOMA) Delegate and Delegation Vice-Chairman to the [National]

American Osteopathic [Medical] Association (AOA) House of Delegates. Commenter has held the previous positions of President (CY'94) – Alexandria (VA) Medical Society, Vice-Councilor (EY'95) - Medical Society of Virginia 8th U.S. Congressional District, Chairman – AOA Technology and Health Care [Telemedicine] Task Force, and Executive Member - AOA Council on Federal Health Programs.

3. Commenter was selected/elected and currently serves as the Special Emergency Radio Service Representative – RPRC, and Medical Profession Representative - Technical Committee, of the National Public Safety Planning Advisory Committee's (NPSPAC) Region-20 [State of Maryland, Washington, DC, Northern Virginia] 821 MHz Public Safety Regional Plan Review Committee (RPRC), for the development and implementation of a Public Safety National/Regional Plan (GN Docket No. 90-7) for the use of the 821-824/866-869 MHz bands by the Public Safety Services pursuant to the Report and Order in GN Docket No. 87-112. Commenter has previously served as Chairman - Legislative/Regulatory Affairs, Region-20 821 MHz Public Safety from 1990 to 2000.

4. Commenter is also a First Class Telecommunications Engineer, certified by the National Association of Radio and Telecommunications Engineers (NARTE), possessor of a First Class Certificate of Competency, issued by the Association of Public Safety Communications Officials, Inc. - International (APCO), a member of the American Radio Relay League (ARRL), and a Fellow of The Radio Club of America. Commenter has over 30 years experience in the telecommunications field with many of these years spent actively participating in Commission proceedings.

5. Commenter is Commission licensed in the Amateur Radio (ARS), Business Radio (BRS), General Mobile Radio (GMRS) and Special Emergency Radio (SERS) services. Commenter has taken examination for and has been issued the Commission's commercial GMDSS Radio Maintainer, GMDSS Radio Operator, and General Radiotelephone Operator Licenses. It is with having the above extensive expertise in dealing with personal, business, medical and emergency/public assistance communications matters that this Commenter is qualified to submit the following timely filed **COMMENTS** in response to this **NPRM**.

III. COMMENTS

6. It is elemental administrative law that the Commission “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”⁷ Furthermore, the courts are required to “strike down, as arbitrary, agency action that is devoid of needed factual support.”⁸

7. In denying Petition RM-10521, the Commission stated that it received over 120 comments filed with the electronic comment filing system (ECFS), “each strongly opposing the Trahos Petition.”⁹ This statement is arbitrarily false!

8. Review of the ECFS record reveals a total of 121 entries into the RM-10521 docket proceeding.¹⁰ Nine of the records concern the filing of the original RM-10521 Petition.¹¹ One of the records is that made by the Commission regarding the issuance of a Public Notice, Report Number 2567, announcing that the Petition was open for public comment.¹² This reduces the actual number of comments and reply comments

to 111. Of these remain commenters, several filed comments **strongly supporting** the Trahos Petition, RM-10521.¹³ Several of the remaining commenters, due to their inability to find justification in opposing the Trahos Petition, elected instead to make destructively critical personal attacks against this Commenter/Petitioner. Such individuals serve no purpose other than to give the entire amateur community a “bad name”. It is most regrettable that the Commission has elected to include these personal attacks in their decision making process. It is also regrettable that the Commission has insulted the intelligence of those commenters who strongly supported the Trahos Petition by stating that all comments filed in the RM-10521 proceeding were in strong opposition.

9. The Commission has made no reference to the Trahos Reply Comments¹⁴, filed in the RM-10521 proceeding, in this instant proceeding¹⁵. These reply comments firmly refuted and addressed all the issues raised by opposition commenters. Yet the Commission has apparently elected not to include these reply comments in its decision making process, an apparent clear breach of its duties under elemental administrative law.

10. Lastly, the Commission states that it agrees with opposition commenters to the Trahos Petition that “an effective method of curtailing illegal personal use by foreign visitors (of PMR radios) can be achieved through awareness programs and other educational material offered via foreign consular offices and the Internet.”¹⁶ As noted in the original Trahos Petition¹⁷, foreign governmental entities have, for years, already made such awareness programs and literature available to the European public. It clearly has not, and definitively will not, serve as the means of curtailing the illegal use of PMR radios in the United States.

IV.

CONCLUSION

11. Before the Federal Communications Commission (Commission) is a **NPRM** proposing several amendments to the 47 CFR Part 97 Amateur Radio Service rules. The Commission in this instant proceeding has elected to dismiss the Trahos Petition, RM-10521, that requested amendment of the 47 CFR Part 97 Amateur Radio Service (ARS) and/or amendment of 47 CFR Part 95 Subpart B Family Radio Service (FRS) rules to allow visiting/transient/tourist non-amateur non-United States (US) resident foreign nationals access to certain frequencies within the 446.0 - 446.1 MHz band for the use of license exempt PMR 446 radios.

12. The Commission, in reaching its decision to dismiss the Trahos Petition, has apparently breached its duties under elemental administrative law by not thoroughly reviewing the comments/reply comments received in the RM-10521 proceeding. This is evidenced by the clearly arbitrary and perceived capricious statements made by the Commission in the instant proceeding and as elaborated upon in paragraphs 7 – 9 supra.

13. This Petitioner firmly requests Commission reconsideration of the Trahos Petition and to thoroughly respond to the clearly arbitrary and perceived capricious statements made in this instant proceeding regarding the dismissal of the RM-10521 Petition.

Respectfully submitted,

|s| ***Michael C. Trahos, D.O., NCE, CET***

Dr. Michael C. Trahos, D.O., NCE, CET

¹ **NOTICE OF PROPOSED RULEMAKING AND ORDER**, WT Docket No. 04-140, FCC 04-79, March 31, 2004. [See also http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512977499.]

² **PETITION FOR RULEMAKING, RM-10521**, Dr. Michael C. Trahos, D.O., NCE, CET, January 2, 2002. [See also http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512977499.]

³ **ERC/DEC/(98)25**, ERC Decision of 23 November 1998 on the Harmonised Frequency Band to be Designated for PMR 446. [See also <http://www.ero.dk/doc98/official/Word/DEC9825E.DOC> and/or <http://www.ero.dk/doc98/official/pdf/DEC9825E.PDF> and/or <http://www.ero.dk/doc98/official/zip/DEC9825E.ZIP>.]

⁴ **ERC/DEC/(98)26**, ERC Decision of 23 November 1998 on Exemption from Individual Licensing of PMR 446 Equipment. [See also <http://www.ero.dk/doc98/official/Word/DEC9826E.DOC> and/or <http://www.ero.dk/doc98/official/pdf/DEC9826E.PDF> and/or <http://www.ero.dk/doc98/official/zip/DEC9826E.ZIP>.]

⁵ **ERC/DEC/(98)27**, ERC Decision of 23 November 1998 on Free Circulation and Use of PMR 446 Equipment in CEPT Member Countries Enlarging the Field of Application of ERC/DEC/(95)01. [See also <http://www.ero.dk/doc98/official/Word/DEC9827E.DOC> and/or <http://www.ero.dk/doc98/official/pdf/DEC9827E.PDF> and/or <http://www.ero.dk/doc98/official/zip/DEC9827E.ZIP>.]

⁶ See DTI Press Release – 30 April 1999, **PMR 446 Service Introduced in the United Kingdom**, Notes for Editors, Paragraph 5. [See <http://www.radio.gov.uk/publication/press/1999/30apr99b.htm>.]

⁷ *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (citation omitted).

⁸ *Association of Data Processing Service Organization v. Board of Governors of the Federal Reserve System*, 745 F.2d 677, 683-84 (D.C. Cir. 1984) (Scalia, J.)

⁹ **Ibid at Footnote 1**, paragraph 62.

¹⁰ See http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts?ws_mode=retrieve_list&id_proceeding=RM-10521&start=1&end=121&first_time=N.

¹¹ See http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts?ws_mode=retrieve_list&id_proceeding=RM-10521&start=121&end=121&first_time=N and http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts?ws_mode=retrieve_list&id_proceeding=RM-10521&start=110&end=117&first_time=N.

¹² See http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts?ws_mode=retrieve_list&id_proceeding=RM-10521&start=120&end=120&first_time=N.

¹³ **COMMENTS**, RM-10521, Steven Karty, August 23, 2002, Robert A. Davisson, August 16, 2002, Philip E. Galasso, August 26, 2002, Unknown author of 17174 Diamond Acres, Forney, TX 75126, August 19, 2002, and Dr. Eugene P. Kaiser, Ph..D., MSEE, BSEE, August 23, 2002.

¹⁴ **REPLY COMMENTS**, RM-10521, Dr. Michael C. Trahos, D.O., NCE, CET, September 24, 2002. [See also http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513292900.]

¹⁵ **Ibid Footnote 1**, at paragraphs 61– 63.

¹⁶ **Ibid Footnote 1**, at paragraph 63.

¹⁷ **Ibid at Footnote 1**.